



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

March 28, 1994
AO-94-11

Ms. Sarah Salvo Blood
69 Cleveland Road
Chestnut Hill, MA 02167

Re: Use of government resources for political purposes

Dear Ms. Blood:

This letter is in response to your February 14, 1994 request for an advisory opinion.

You have stated that literature advocating a Proposition 2 1/2 override was prepared by the Brookline Community Coalition ("the Coalition") and recently distributed to students in school by teachers.¹ You state that the students were asked to take the literature home to their parents. The Coalition then held a meeting at which members of town departments "told about the cuts in their respective departments" and a school committee member urged parents to support the override.

This office does not ordinarily address, in advisory opinions, actions which have already occurred, and will not do so here. However, you have asked four general questions, each of which I will respond to individually.

1. Can public school teachers ask children to take literature, which advocates a particular vote on an upcoming ballot question, home from school to give to parents?

M.G.L. c. 55 governs the regulation of campaign finance activity in Massachusetts, which includes the use of government resources for political purposes. In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court looked to the provisions of M.G.L. c. 55 in addressing the question of whether municipalities can raise or spend funds for the purpose of influencing the results of a referendum question. The Court stated that M.G.L. c. 55 bars municipalities from making such expenditures since the statute "demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." Id. at 186-187.

¹. I assume you are referring to a public school.

This office has issued an interpretative bulletin, IB-91-01, to provide guidance concerning the Anderson decision (a copy is enclosed, for information).

It is the opinion of this office that if a public school teacher distributes, during his or her work day, information advocating a particular vote on a Proposition 2 1/2 override ballot question, that this would not be consistent with the campaign finance law. The use of school premises and public funds received by the teacher in the form of salary, to distribute the material, would violate c. 55, as interpreted in Anderson. In addition, if a group uses town funds to print the newsletter, this would also be a violation of the campaign finance law.²

2. Can teachers tell students in the classroom whether they are for or against an anticipated override?

As noted in the preceding section of this opinion, public resources cannot be used to support or oppose a ballot question. In Anderson, the court held that a city does not have the authority to appropriate funds to be expended in support of a ballot question or to use "other appropriated funds, including the services of any employees appropriated for other purposes, for the purposes of influencing" the vote on a ballot question. Anderson, 376 Mass. at 198. The court stated that the campaign finance law demonstrates the state's "substantial, compelling interest in assuring fairness of elections and the appearance of fairness in the electoral process." Id., at 193. The state's compelling interest justifies the restraint "against using public tax revenues to advocate a position which certain taxpayers oppose." Id., at 195. Although payment of public employees who, while being paid, advocate a position on a ballot question might justify the restraint discussed in Anderson, the court did not decide the question. The court stated that "[i]ndividual city employees may have certain rights of speech, even during working hours, concerning the [ballot question]." Id. at 199.

It is well settled that neither teachers nor students "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Tinker v. DesMoines Independent Community School District, 393 U.S.508 (1969).

2. Assuming truly objective, informational material for voters could be prepared by one side or that each side is given some opportunity to participate in its preparation, the distribution of such material is nonetheless prohibited by other election laws unless expressly authorized by statute. See Election Division of the Secretary of State's Memorandum, July 26, 1991, and the analysis and material cited therein. To date, only two municipalities have been authorized by the Legislature to distribute informational material to voters. See 1989 Mass. Acts ch. 630 (Cambridge) and 1987 Mass. Acts ch. 274 (Newton).

In addition, teachers may, in public forums, also comment on matters of public interest in connection with the operation of the schools Pickering v. Board of Education, 391 U.S. 563 (1967). However, a classroom containing "a captive audience of public school children" is not a public forum and speech can be restricted since the classroom "bears the imprimatur of the school." Miles v. Denver Public Schools, 944 F.2d 773, (10th Cir. 1991). See Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988) and Ward v. Hickey 996 F.2d 448 (1st Cir. 1993).³ Moreover, the Supreme Court has "repeatedly emphasized the need for affirming the comprehensive authority of the State and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." (Emphasis added) Tinker, at 507.

Based upon the above analysis it is this office's opinion that teachers should not advocate a particular vote on a ballot question during work hours to students in a classroom setting. Such advocacy, especially if the facts demonstrate that it is more than incidental to other in-class activities of a teacher, would not be constitutionally protected speech. Rather, such advocacy would constitute a use of "appropriated funds, including the services of any employees appropriated for other purposes, for the purposes of influencing" the vote on a ballot question in violation of the spirit, if not the letter, of the campaign finance law, as interpreted in Anderson.

I wish to emphasize that this office does not believe that a teacher's speaking at a public forum such as a school committee meeting or merely stating, in the course of conversation with students or others, that he or she is in favor of or opposed to a particular ballot question would violate the requirements of the law as interpreted in Anderson.

Finally, I note that your question raises concerns relating to the definition of what conduct by teachers is appropriate and professional. Therefore, you should probably seek guidance from your school district, which might have established policies relating to when political speech by teachers is appropriate.⁴

3. Can school administrators, principals, or superintendents advocate a Proposition 2 1/2 override during a PTO meeting held on school property?

3. In Ward the controversy considered by the Court involved statements by a biology teacher concerning abortion. There had also been controversy regarding a teacher's alleged discussion of a Massachusetts ballot question. However, this aspect of the case was resolved by the jury and not addressed by the Court. Ward 996 F.2d at 450.

4. For example, it would seem that the age of students in the classroom would be a factor in determining the propriety of the teacher's conduct.

This office defines "government resources" very broadly. In IB-91-01, the office stated that "government resources" means:

personnel, paper, stationery and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government. In short, no governmental resource may be utilized by any person (including a public employee, whether during work hours or otherwise) in order to promote or oppose a ballot question.

Space within a public building is a government resource. This office has advised that areas within public buildings which are accessible to the public may be used by a group advocating or opposing a position on a ballot question only if each side is provided the same opportunity under the same terms and conditions extended to the general public to use the space. In other words, the described use of school property is permissible only if those opposing the override are given an equal opportunity for their own meeting on school premises.

Policy making officials such as school administrators, principals, and superintendents are also "government resources" while involved in matters during their work hours. However, they may act or speak out in their official capacity during work hours, without violating Anderson, if in doing so they are acting within the scope of their official capacity. See IB-92-02. Since the proposed ballot question would impact on the public school department's budget, a matter within the scope of the administrators' official capacity, the administrators may speak out on the issue, even if the speech is during work hours.

4. Where the specific language of a Proposition 2 1/2 override has not been determined, but an override will be on the ballot in an upcoming election, do the prohibitions against government expenditures relative to the override apply?

In your letter, you have asked if each of the described activities are permissible where the board of selectmen has voted to place an override question before the voters in a specific upcoming election, but the language of the ballot question has not been determined.

This office has stated that "the central issue" in determining whether a particular governmental expenditure relating to a ballot question is subject to the campaign finance law, "is whether the purpose of the expenditure being made is to influence the vote on a ballot question." See pages 5-7 of IB-91-01.

As noted in IB-91-01, the style, tenor and timing of an expenditure is considered to determine whether the intent to influence the vote exists. In AO-91-17, the office noted that if a school superintendent were to mail a one-page flyer to the

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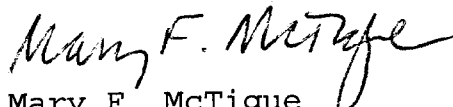
parents of the students in a public school system urging them to (1) attend a town meeting, (2) vote for an article putting an override question on the ballot, and (3) vote "yes" at the anticipated special election, the campaign finance law would be violated even though the mailing occurred before the question was officially "on the ballot."

Similarly, considering the timing, style and tenor of the expenditures described in your questions, such expenditures would be prohibited. They would clearly be designed to influence the vote on the Proposition 2 1/2 override, even if the precise language and terms of the override are not yet determined.

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have any additional questions.

Very truly yours,


Mary F. McTigue
Director

MFM/cp
Enclosures
cc: Rhoda Schneider, General Counsel
Massachusetts Department of Education